



United States Government

**NATIONAL LABOR RELATIONS BOARD**  
**1099 14<sup>th</sup> STREET NW**  
**WASHINGTON DC 20570**

June 25, 2015

Re: United States Postal Service  
Case 05-CA-122166

### **ORDER DENYING MOTION**

On April 30, 2014, the General Counsel issued a complaint against the Respondent alleging that it had violated Section 8(a)(1) and (5) of the Act by failing and refusing to provide requested information to the Charging Party, American Postal Workers Union, AFL-CIO. The information included cost data contained in a form that is submitted to the Respondent by private contractors seeking to provide transportation services that the Respondent could also provide using its own employees. The Charging Party sought the information in connection with its effort to establish, pursuant to its collective-bargaining agreement with the Respondent, that the services could be provided more economically with the Respondent's employees. The case was tried before Administrative Law Judge Arthur J. Amchan on July 30 and August 1, 2014, and on September 10, 2014, Judge Amchan issued a decision finding the violation as alleged. No exceptions were filed to the decision, and on October 24, 2014, the Board issued an order adopting it and ordering the Respondent to provide the disputed information to the Charging Party. Husch Blackwell LLP, a law firm, now<sup>1</sup> moves to intervene, and further moves to have the Board reconsider, rehear or reopen the case. For the reasons set forth below, the motion is denied.

The provision of the Board's Rules and Regulations governing intervention contemplates that motions to intervene be filed timely.<sup>2</sup> Here, the appropriate time for filing a motion to intervene has long passed—Husch Blackwell did not file its motion until after the Board had issued an order adopting the judge's decision based on the absence of exceptions. Husch Blackwell argues, however, that its motion is timely because it "was not a party or on notice of the complaint, hearing, Administrative Law Judge Decision or Order [of] the Board" until the Respondent advised a member of a trade association that it represents "on or about December 9, 2014." It further argues

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<sup>1</sup> The motion was filed on February 4, 2015.

<sup>2</sup> Rules and Regulations, Series 8, as amended, Section 102.29.

that this lack of notice was improper and contrary to Board procedures. We disagree. The NLRB Casehandling Manual provides in relevant part:

In addition to the initial contacts with the charging and charged parties described above, a copy of the charge should be served by regular mail on potential parties in interest, as soon as their identity becomes known, with an affidavit of service retained in the file. In such circumstances, the parties in interest should be advised of the right to be represented and that Forms NLRB-4541 and 4701 and the Agency's Policies and Procedures for Electronic Communications can be downloaded from the Agency's website.

Examples of such parties include:

- Any labor organization alleged to be dominated or assisted in an 8(a)(2) charge
- Any employer involved in a CC or CD case
- Any labor organization involved in a CD case
- In an 8(b)(2) case, any employer whom the charged union is allegedly causing or attempting to cause to violate Section 8(a)(3)
- Any party to a collective-bargaining agreement alleged to be invalid or unlawful, including CE situations
- Any business entity that is performing work alleged to have been subcontracted unlawfully

NLRB Casehandling Manual for Unfair Labor Practice Cases, section 10040.6. (Notification to Potential Parties in Interest). Husch Blackwell has disclosed no interest in this case that might even arguably have entitled it to notification of the charge or complaint.<sup>3</sup> In sum, the motion to intervene is untimely, and responsibility for the procedural default may not be shifted to the regional office or the General Counsel.

The subsection of the Board's Rules and Regulations governing reconsideration, rehearing, and reopening the record<sup>4</sup> provides in relevant part:

(d)(1) A party to a proceeding before the Board may, because of extraordinary circumstances, move for reconsideration, rehearing, or reopening of the record after the Board decision or order. A motion for

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<sup>3</sup> While the instant motion is styled as filed by and on behalf of Husch Blackwell, it refers at several points in the argument to "moving parties." The reference, never specifically defined, is apparently to two contractors that supplied information of the kind in dispute, and perhaps also to the trade organization to which they belong. While the contractors may have an interest in the confidentiality of some of the information, that interest does not rise to the level requiring notification under section 10040.6. Moreover, it is undisputed that the Charging Party agreed at or before the hearing to be bound by a non-disclosure agreement. Husch Blackwell does not address this agreement, much less contend that it would be inadequate to protect the interests of the contractors.

<sup>4</sup> Rules and Regulations, Series 8, as amended, Section 102.48(d).

reconsideration shall state with particularity the material error claimed and with respect to any finding of material fact shall specify the page of the record relied on. A motion for rehearing shall specify the error alleged to require a hearing de novo and the prejudice to the movant alleged to result from such error. A motion to reopen the record shall state briefly the additional evidence sought to be adduced, why it was not presented previously, and that, if adduced and credited, it would require a different result. Only newly discovered evidence, evidence which has become available only since the close of the hearing, or evidence which the Board believes should have been taken at the hearing will be taken at any further hearing.

The rule permits only a party to seek the requested relief. Because leave to intervene is being denied, this relief must be denied as well. Moreover, the motion fails to comply with the rule in any respect. With respect to reconsideration of the Board's order, it does not state with particularity any material error. With respect to rehearing, it does not specify the error alleged to require a hearing de novo. And with respect to reopening the record, it does not identify the additional evidence to be adduced or explain how it would require a different result.

The motion is denied.

By direction of the Board:

Henry S. Breiteneicher  
Associate Executive Secretary